

REMARKS

This Response is to the non-final Office Action of April 24, 2003. Claims 1 to 22 were pending previously in this application. In this response, Fig. 4 and associated text to the specification are being added. Claims 1, 11 and 18 have been amended. No new matter has been introduced by the added drawing, text or claim amendments.

In the Office Action, the drawings were objected to under 37 C.F.R. § 1.83(a). The separate insert claimed and described in the application was not explicitly shown in the drawings, which caused the objection. Applicant disclosed the separate insert in the Summary of the Invention, in the Detailed Description, for example at page 8, and in Claims 9 and 17. New Fig. 4 and associated text added herein merely illustrate what has been clearly and previously set forth in the application as filed originally. Fig. 4 shows the removable end wall shown originally in Fig. 3. The only difference between the two figures is that the information 36 is shown on a separate insert 44 in Fig. 4, wherein the insert is then placed within end wall 24 for packaging. All of that subject matter was disclosed in the originally filed application. Applicant therefore respectfully submits that new Fig. 4 properly overcomes the objection to the drawings.

Claims 1 to 8, 10 to 16 and 18 to 22 were rejected under 35 U.S.C. § 103(a) as being obvious in view of U.S. Patent No. 2,380,367 to Ranney ("*Ranney*"), U.S. Patent No. 6,138,905 to Hachenski ("*Hachenski*") and in further view of U.S. Patent No. 5,896,686 to Howes ("*Howes*"). Claims 9 and 17 were rejected under 35 U.S.C. § 103(a) as being obvious in view of *Ranney*, *Hachenski*, *Howes* and in further view of U.S. Patent No. 5,375,704 to Focke et al. ("*Focke*").

The present invention is directed to a chewing gum package housing chewing gum, wherein an end wall of the package is removable. Giveaway information is printed or otherwise marked and placed inside the package so that a consumer must open the package and remove or move the end wall to view in the end wall whether the consumer has won a giveaway. The package is advantageous in one respect because the consumer can then redeem the end portion with the giveaway information if such information displays a giveaway for the consumer. At the same time, the gum products are still housed inside the package so that the consumer can consume the gum over many days if desired. Also, the consumer can transport the gum in a typical manner, such as placing the gum package with the gum in the consumer's pocket.

Moreover, the consumer can immediately view the giveaway information upon removing the end. Further manipulation of the removed portion is not required.

Applicant believes that the presently claimed invention has certain advantages over those shown in the prior art because the prior art does not show a package allowing for a giveaway or redeemable prize to be removed therefrom and redeemed, while at the same time store the consumable goods over long periods of time. A plastic bottle having a cap with indicia does not share the same advantages because, while the bottle holds the product when the cap is removed, the liquid product is exposed to air, and therefore has a limited consumable life once the cap is removed. While plastic bottles allow for the caps to be replaced, such action would not allow the consumer to redeem the replaced cap for a prize. Since bottles of liquid are typically consumed completely shortly after being opened, the above-described difference between the liquid bottle and the gum package of the present invention does not overly effect the liquid package negatively. With gum products, however, the package should be designed so that the consumer can consume the gum products housed within over a period of days, or even weeks.

The present invention requires that the end wall of the package must be removed from the product to see whether the consumer has won a giveaway. The package conceals the giveaway information until the consumer properly opens the gum package and views the information, which is housed within the removed or moved end wall. The only reference that includes a removable portion, having indicia on an interior, is *Howes*. *Howes*, in contrast to the claimed invention, uses a cover to hide the giveaway information. Therefore, instead of being able to immediately view the giveaway information, the consumer must remove a cover from the cap.

Although Applicant submits the claims were allowable as filed, the above-described distinction has been added into the claims of the present invention. In particular, independent Claims 1 and 11 have been amended to specify that the giveaway information is viewable immediately upon removal of the end wall on which the gum product is housed. Neither *Ranney* nor *Howes* disclose, teach or suggest the limitations of Claims 1 and 11.

As noted by the Office Action, *Ranney* does not disclose viewing giveaway information on an inner surface of a package. Thus, *Ranney* does not disclose the claimed concept.

Howes also fails to meet the claim because as seen readily in that patent, the cap includes a cover. Without a cover, one could see the indicia by manipulation of the bottle as set forth in

the background of *Howes*. Therefore, either *Howes* discloses the use of a cover on the cap or discloses that the indicia is visible, thereby failing to meet at least one limitation of the claims.

With respect to *Hachenski*, this reference fails to disclose an end that is designed to be removed. Thus, *Hachenski* fails to disclose a removable end that could even include indicia. Moreover, because *Hachenski* does not involve gum products, involving instead a meal kit that requires, in certain uses, closing the package, the packaging system of *Hachenski* is not readily modifiable to teach the components of Claims 1 and 11.

As noted above, the elements of Claims 1 and 11, as well as the claims that depend therefrom, set forth structural limitations that are not taught or suggested by *Hachenski*, *Howes*, and *Ranney*, either alone or in combination. It is axiomatic that for an obviousness rejection, each element of the claim must be taught by at least one of the references. The cited art fails to meet this test.

Claim 18 is directed to a method for providing giveaway information in a chewing gum package. The method includes allowing the information to be viewable without further manipulation of the cover. Thus, the giveaway information on the removed end wall is immediately viewable upon removal of the end wall. The references cited do not disclose the elements of Claim 18.

Applicant also respectfully submits that *Focke* does not teach the limitations of Claims 9 and 17 as is asserted in the Office Action. The separate insert of Claims 9 and 17 is read in combination with their respective base claims to specify that the insert is viewable by looking towards an inner surface of a removable end of a product package. The printable carrier 28 of *Focke* is completely different. Fig. 1 illustrates that point. A viewable portion 30 extends outside of front wall 31 as indicated by the solid line of portion 30. An anchoring part 29 is instead housed inside top wall 21, indicated clearly by hidden lines. The viewable portion 30 is viewable from outside of the pack 10, i.e., through clear plastic, presumably to show branding. *Focke* does not therefore meet the elements of Claims 9 and 17, which specify that the giveaway information be viewed by looking towards and inside of the removable or moveable end wall of the package. Applicant therefore respectfully submits that Claims 9 and 17 provide additional patentable features over the art of record.

Moreover, Applicant respectfully submits that the references cannot be combined as suggested by the Examiner without undue hindsight reconstruction. First, the principal reference, *Ranney*, does not even teach any indicia on any inner portion of the packaging used to house the individual sticks of chewing gum. The Examiner then relies on two separate references, *Hachenski* and *Howes*, to disclose this concept. However, each of these references teaches away from the claimed invention.

In this regard, *Hachenski* is designed so that the end wall is not removed. Therefore, this element, which is required by each and every claim, is specifically taught away from by *Hachenski*.

Moreover, the *Howes* reference specifically teaches away from another claimed element wherein, upon immediate removal of the end wall, the giveaway information is viewed. In *Howes*, the information is hidden by a cover. Thus, even if the references were combinable, the claimed invention would still not be provided. In this regard, the only reference that discloses a removable end that includes any indicia, whether immediately viewable or not, is *Howes*. But, in *Howes*, it is specifically required that a cover is provided to prevent one from viewing the indicia even upon removal of the cap. If this cover is not present as noted by *Howes*, then one can view the giveaway information or indicia prior to removing the cap, which also teaches away from Applicant's claimed invention.

Therefore, under any reading of *Howes* and any combination therewith with *Ranney*, the claimed invention is not provided. Either a package having a removable end is provided wherein the indicia is hidden by a further cover, and therefore not immediately viewable, or, a package including an end wall that is removed including giveaway information that is viewable prior to removing the end wall is provided. Neither of these structures provides the claimed invention. Nor does the other cited reference, *Hachenski*, remedy these deficiencies.

Furthermore, Applicant respectfully submits that the references fail to disclose or suggest the combination that has been posed by the Patent Office. *Hachenski* relates to an end wall that is specifically designed not to be removed. Thus, there is no motivation to modify *Ranney* based on *Hachenski*. *Hachenski* discloses a cover that can be revised to close the package; *Ranney* discloses an end wall that is discarded. Where is the motivation to combine these structures?

Howes relates to a bottle including a screw cap. Specifically, *Howes* relates to a liquid product located in a transparent container. Why would one skilled in the chewing gum packaging art look to plastic containers and screw caps in designing an improved chewing gum package?

The fact that the references can be modified is not the test of whether or not the prior art suggests the claimed invention. The art must provide the motivation for the combination. The Patent Office has failed to provide any such suggestion from the art for the combination.

Accordingly, Applicant respectfully requests that the rejections under 35 U.S.C. § 103 be withdrawn as they are improper as a matter of fact and law.

For the foregoing reasons, Applicant respectfully submits that the above-identified patent application is now in a condition for allowance and earnestly solicits reconsideration of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: July 23, 2003